REMARKS

Response to Restriction Requirement

Restriction has been required between the product and process inventions characterized by the Examiner as follows:

Group I: Claims 1-6 and 10 drawn to potassium salt or sodium salt of (-)-2-{[2-(4-hydroxyphenyl)ethyl]thio}-3-[4-(2-{4-[(methylsulfonyl)oxy]phenoxy}-ethyl)phenyl]propanoic acid; and

Group II: Claims 7-9, drawn to methods of treating various disorders.

The Examiner notes that if Applicants elect the invention of the product claims (Group I), and the product claims are subsequently found allowable, the withdrawn process claims that depend from or otherwise require all limitations of the allowable product claim will be considered for rejoinder, provided the process claims require (or are amended during prosecution to require) all limitations of an allowed product claim.

In response to this requirement for restriction, Applicants hereby elect the product invention of **Group I**.

The Examiner has also made what is understood to be a *provisional* election of species with respect to composition claim 10, wherein a compound according to any one of claims 1 to 5 is combined with another therapeutic agent that is useful in the treatment of disorders associated with the development and progress of atherosclerosis. The provisional election is being required between the species of the "another therapeutic agent" recited in claim 10, being:

a- hypertension

b- hyperlipidaemias

c- dyslipidaemias

d- diabetes

e- obesity.

This election of species is understood to be a *provisional* election inasmuch as the Examiner notes that the claims will be restricted to the elected species "if no generic claim is finally held to be allowable," but that "upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim."

It is presumed that by "generic" claim the Examiner is *here* referring to the genus in claim 10 of which these five disorders are species, *i.e.,* the other "therapeutic agent that is useful in the treatment of disorders associated with the development and progress of atherosclerosis." These five species are listed in claim 10 in the format of examples of this genus (*i.e.*, "such as") rather that as limitations, which format is generally not accepted under US practice. Therefore, to place this composition claim in an acceptable format, the recitation of "such as hypertension, hyperlipidaemias, dyslipidaemias, diabetes and obesity" has been removed from claim 10, thereby placing claim 10 in proper generic form, and these five species have been moved to new dependent composition claim 11 where they are recited as a further limitation to the generic composition of claim 10.

In response to this requirement for an election of species, Applicants hereby provisionally elect the species of "diabetes," pending the allowance of generic composition claim 10, at which time it is understood that Applicants will be entitled to "consideration of claims to additional species which are written in dependent form," *i.e.*, all species recited in new dependent claim 11. Per the Examiner's further request, Applicants hereby indicate that claims 10 and 11 are specifically "readable upon the elected species."

Claim Amendments

Claim 8 has been cancelled as being in a "use" format not generally acceptable under U.S. practice. Method (process) claims 7 and 9 have been withdrawn, but remain pending for rejoinder under the conditions noted by the Examiner and above. Claims 2-7 and 10 have been amended and new claim 11 has been added. Following entry of these amendments, claims 1-7 and 9-11 remain pending in this application, with claims 7 and 9 indicated as being withdrawn. More particularly:

- Claims 2-5 have been amended to more appropriately refer to "The salt" of claim 1, rather than "A salt."
- Caims 4 and 5 have also been amended to be dependent on claim 1 only, thereby overcoming the improper multiple dependency of claim 5-7 and 9-11.
- Claim 4 has also been amended for clarification by replacing "which may be" to "which is in the form of" a solvate, a hydrate etc.
- Claim 6 has been amended to make clear that the pharmaceutical formulations *need* have only one but may have more than one pharmaceutically acceptable adjuvants, diluents and/or carriers.
- Claim 10 has been amended, for the reasons explained above, by removing the exemplary recitation of "such as hypertension, hyperlipidaemias, dyslipidaemias, diabetes and obesity."
- New claim 11 has been added, for the reasons explained above, to recite that the other therapeutic agent of claim 10 is useful in the treatment of a disorder associated with the development and progress of hypertension, hyperlipidaemias, dyslipidaemias, diabetes and obesity. Support for claim 11 is found, *inter alia*, in original claim 10.

It should be clear that the above amendments to the claims and new claim 11 do not add new matter and are otherwise in proper form. Therefore entry of these amendments is believed to be in order and is respectfully requested.

Conclusion

All grounds for objection and/or rejection have been addressed by the above amendments and/or Remarks and, it is believed, have been overcome. According, all claims and this Application should now be in condition for allowance, and a Notice to that effect is respectfully requested.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully Submitted,
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Date: June 11, 2007 By: _____

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